



MEMORANDUM

DATE	May 11, 2023
TO	OMBC Board Members
FROM	Terri Thorfinnson, Administrative Services Program Manager
RE:	Agenda Item 15(B) - 2023 OMBC Informational Bills Watch List

AB 242 (Wood) Critical Access Hospitals Physicians

Summary: Existing law, the Medical Practice Act, authorizes the Medical Board of California to grant approval of the employment of licensees on a salary basis by licensed charitable institutions, foundations, or clinics if no charge for professional services is made, in accordance with specified requirements. Existing law provides an exception to the prohibition on charging for professional services for a federally certified critical access hospital that employs licensees and charges for professional services rendered by those licensees to patients under specified conditions, including that the medical staff concur by an affirmative vote that the licensee’s employment is in the best interest of the communities served by the hospital. Existing law makes that exception operative only until January 1, 2024.

This bill would permanently extend authorization for federally certified critical access hospitals to directly employ medical professionals, and charge for professional services rendered by those medical professionals.

Analysis: The proposed amendment to extend the authorization to employ medical professionals and charge for services rendered does not directly impact OMBC. While the Board is referenced as having the authority to grant approval of employment, this is not a transaction that occurs much beyond licensing of physicians and surgeons in general. The Board does not receive requests for approval of such employment. Additionally, the board would not enforce this bill because it does not have jurisdiction over hospitals and, in particular, Critical Assess Hospitals. As a result, this would not impact either the Board’s licensing or enforcement workloads nor have any fiscal impact as amended in this January 13, 2023, version.

AB 834 (Irwin) Physician and Surgeon Partnerships

Summary: This bill so far makes minor changes to Business and Professions Code section 2416 related to professional partnerships for physicians. Specifically, the bill adds doctors of podiatric

medicine and prohibit non-podiatrists and non-physicians from practicing in the partnership or voting on partnership matters outside the partner's scope of practice.

Analysis: This bill is doing some technical clean-up in adding doctors of podiatric medicine to this professional partnership BPC section. It does however create some restrictions related to non-physician and non-podiatric medical doctors' role and voting authority within the partnership. Existing law allows for non-physicians to be in partnership with physicians and requires the physician ownership is 51%. In any case, it does not impact the board or physicians and surgeons, but does modify their partnership with non-physicians.

AB 1028 (McKinnor) Mandatory Reporting for Abuse

Summary: This bill attempts to remove the requirement that physicians report injuries to their patients that may constitute domestic violence, sexual-abuse or elder abuse. And eliminates the criminal liability for failing to report such patient harm.

Analysis: This is the second attempt at amending the reporting requirement for Physicians and Surgeons when their patients have harm or injury whose cause may be criminal. The "warm hand-off" wording is included in this version. The pattern of these amendments is to repeal the section and put in place a nearly identical worded provision with minor changes. Overall, the basic requirement for Physician and Surgeon reporting remains as do the forms. What has changed is to eliminate the Physician and Surgeon criminal liability for non-reporting. However, a surprising change made to section 11160 is to eliminate the detailed list of crimes that are defined in P.C section 11160 as constituting "assaultive or abusive conduct" as referenced in the addendum below. Removing that definition of what would trigger mandatory reporting could make the requirement more vague and subject to interpretation.

This bill does not reflect the policy of a warm hand-off and elimination of mandatory reporting for physicians that the board supported last session. There may be behind the scenes pressure to not eliminate mandatory reporting, which produced this version of the bill. For this reason, it is recommended to be a watch bill.

AB 1130 (Berman) Substance Abuse

Summary: This bill deletes the reference to an "addict" and instead replace it with the term "a person with substance use disorder," among other technical non-substantive changes.

Analysis: This bill appears to revise the wording and reference to "addict" in BPC section 2241 to be replaced with "person with substance use disorder." Although the bill seems to make technical changes to this section, it still is a topic that warrants the board to have it on its watch list.

AB 1741 (Waldron) Clinical Lab Personnel

Summary: This bill would revise the activities that may be performed by an unlicensed person to specify those activities that may be performed under direct and constant supervision of a physician and surgeon or licensed person, those activities that may be performed under supervision and control, as defined, and those activities that may not be performed by an unlicensed person.

The bill would provide an exception to this prohibition if the unlicensed person is assisting a licensed physician and surgeon or a licensed person, other than a trainee, in a licensed clinical laboratory. The bill would also prohibit unlicensed laboratory personnel from releasing waived, moderate, or high-complexity testing.

Analysis: This bill changes requirements for clinical lab personnel, in particular unlicensed clinical lab personnel. It adds the requirement that unlicensed clinical lab personnel must be directly supervised by a physician and surgeon or other specified personnel. This bill does not generate any workload or fiscal impact for the Board since the board does not have jurisdiction over clinical laboratories and their personnel. While physicians and surgeons are added to this amendment, the bill does not create a violation that the OMBC has jurisdiction to enforce against a licensee. It is included on the watch list to be aware of this physician supervision requirement.

SB 357 (Portantino) DMV: Physician Reporting Impairment

Summary: This bill modifies an existing physician reporting requirement to exempt physicians and other health entities from various legal liability. This bill still requires physicians to report to the Department of Motor Vehicles (DMV) minor patients that have an impairment that causes them to lose consciousness that could cause an accident if they were issued a license to drive.

Analysis: This bill makes minor modifications related to physician reporting and DMV authority to deny licenses based on patient impairment. The relevant statutory section that applies to OMBC is the Health and Safety Code Section 13030 is added. In this newly added section (e) specifically prohibits a health care provider being subject to discipline or other penalty. The bill does require the Department of Motor Vehicles to collect data and report back to the Legislature the number of physician reports before and after this bill until 2029 with the purpose of evaluating the impact of the change to discretionary reporting.

Healing Arts Watch List

AB 1751 (Gipson) Opioid Prescriptions Discussion and Alternatives

Summary: This bill makes clarifying changes to Health and Safety Code sections 11158.1. It expands the required patient discussion to all patients of all ages considering opioid treatment for pain. It repeals the exemption of not having to discuss with patients being treated for a diagnosis of chronic intractable pain and instead add the exemption for hospice care.

Existing law requires a prescriber, with certain exceptions, before directly dispensing or issuing for a minor the first prescription for a controlled substance containing an opioid in a single course of treatment, to discuss specified information with the minor, the minor's parent or guardian, or another adult authorized to consent to the minor's medical treatment.

This bill would extend that requirement for the prescriber by applying it to any patient, not only a minor, under those circumstances. The bill would also require the prescriber to discuss the availability of nonpharmacological treatments for pain, as defined.

Existing law makes an exception to the requirement for the prescriber in the case of a patient who is being treated for a diagnosis of chronic intractable pain, as specified. This bill would remove that exception and would instead make an exception in the case of a patient who is currently receiving hospice care.

The bill would require the prescriber, after discussing the information, to offer, as deemed appropriate by the prescriber, a referral for a provider of nonpharmacological treatments for pain, and to obtain consent from the patient, a minor patient's parent or guardian, or another authorized adult, as specified.

Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), requires a health benefit plan issuer that offers coverage in the small group or individual market to ensure that the coverage includes the essential health benefits package, as defined.

This bill would make legislative findings and declarations relating to addiction associated with overreliance on prescription medication for pain management, and providing that nonpharmacological treatments for pain should be considered during the next update to the state's essential health benefits benchmark plan.

Analysis: This intent of this bill is to broaden the requirement that physicians prescribing opioids for treatment of pain to all patients except those under hospice care. It requires physicians discuss non-opioid treatment options. The intention of the bill is to expand this required discussion with patients and to add in the discussion of alternatives to opioid treatment, which the author believes are not utilized enough.

AB 1731 (Santiago) CURES database: buprenorphine Reporting Exemption ER

Summary: This bill adds an exemption to the requirement that prescribers otherwise consult the CURES database. This bill exempts a health care practitioner from the duty to consult the CURES database when the health care practitioner prescribes, orders, administers, or furnishes buprenorphine or other controlled substance containing buprenorphine in the emergency department of a general acute care hospital.

Analysis: This bill creates a narrow exemption to CURES reporting for prescribers working in the Emergency room of a hospital. Since this bill exempts physicians from the requirement to consult the CURES data base before prescribing buprenorphine or other drugs containing buprenorphine, it does not create a violation. This bill follows the legislative pattern of exempting physicians in the emergency room from otherwise specific requirements or reporting.

AB 1094 (Wicks) Drug Testing Pregnant Women: Consent

Summary: This bill adds a new section 123601 to the Health and Safety Code. The bill prohibits any health practitioner from performing a drug test on a pregnant woman without her prior written or verbal consent unless the physician determines the test is needed to because of the life- threatening condition.

Analysis: This bill would prohibit medical personnel from performing a drug or alcohol test or screen on a pregnant person, perinatal person, or newborn without the prior written and verbal informed consent of the pregnant person, perinatal person, or person authorized to consent for a newborn, and would require the test or screen to be medically necessary to provide care. The bill would authorize performing a drug or alcohol test or screen on a pregnant person, perinatal person, or newborn without consent if, in the physician's judgment, an emergency exists, the person is in immediate need of medical attention, and an attempt to secure consent would result in a delay of treatment that would increase the risk to the person's life or health. If a test or screen is performed without consent, the bill would require that the pregnant person, perinatal person, or person authorized to consent for a newborn receive verbal and written notification, as specified. The bill would prohibit medical personnel from refusing to treat a pregnant person, perinatal person, or newborn due to the refusal to consent to a drug or alcohol test or screen.

This bill may be correcting some abuse when it comes to testing for drug or alcohol pregnant women without their consent.

AB 1021 (Wicks) Controlled Substances Change in Federal Law: Rescheduling

Summary: This bill tried to bring more legal certainty and speed to any federal drug schedule change by amending the statute to allow for automatic authorization for all state prescribers as soon as federal changes are made to scheduled drugs. Among the amendments is to state that this new section of the BPC 26001 does not apply to cannabis or cannabis product because cannabis is regulated in BPC section 11150.2

Analysis: The federal Controlled Substances Act classifies a number of drugs and chemicals into one of five schedules. Drugs falling within Schedules II through V may be prescribed only by health practitioners in possession of a DEA registration and are ranked according to the drug's potential for abuse, with lower numbered schedules representing drugs with a higher risk of abuse or dependence. Schedule I drugs have been determined to have no currently accepted medical use and a high potential for abuse. Schedule I drugs may not be prescribed by any health practitioner in the United States. Examples of Schedule I drugs include cannabis, LSD, peyote, heroin, and ecstasy.

The intention of this bill is to streamline legal authorization in state statute of any changes to drugs classified as schedule 1 controlled substance that are reclassified to be otherwise legal. The advocates for this bill claim that some of these schedule 1 substances do have medical use and would like to remove any delay in making them legal in California in the event that there are changes to the Federal Controlled Substance Act.

AB 816 (Haney) Minor's Consent to buprenorphine Treatment

Summary: Existing law authorizes a minor who is 12 years of age or older to consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem. Existing law exempts replacement narcotic abuse treatment, as specified, from these provisions.

Analysis: This bill would authorize a minor who is 16 years of age or older to consent to replacement narcotic abuse treatment that uses buprenorphine. This change in law is amending Family Code section 6929. This bill is on our list to make you aware of this potential change in law regarding prescribing buprenorphine to minors.

AB 269 (Berman) COVID Testing and Dispensing Sites

Summary: Existing law, the California Emergency Services Act, authorizes the Governor to declare a state of emergency during conditions of disaster or extreme peril to persons or property, including epidemics. Pursuant to this authority, on March 4, 2020, the Governor declared a state of emergency relating to the novel coronavirus 2019 (COVID-19) pandemic, and ordered, among other things, that the certification and licensure requirements as specified in statute and regulation be suspended to all persons who meet the requirements under the

Clinical Laboratory Improvement Amendments (CLIA) for high complexity testing and who are performing analysis of samples to test for SARS-CoV-2, the virus that causes COVID-19, in any certified public health laboratory or licensed clinical laboratory, and that the California Health and Human Services Agency is required to identify and make available medical facilities and other facilities that are suitable for use as medical facilities as necessary for treating individuals who test positive for COVID-19. This bill would declare that it is to take effect immediately as an urgency statute.

Analysis: This bill would authorize a person to perform an analysis of samples to test for SARS-CoV-2 in a clinical laboratory or a city, county, or city and county public health laboratory if they meet the requirements under CLIA for high complexity testing. The bill would, until January 1, 2024, authorize an entity contracted with and approved by the State Department of Public Health to operate a designated COVID-19 testing and dispensing site to acquire, dispense, and store COVID-19 oral therapeutics, as defined, at or from a designated site. This bill is on our list for awareness of the extension of testing authority.

AB 883 (Mathis) Expedite Military License Application: Defense SkillBridge program

Summary: Existing law requires a board to expedite, and authorizes a board to assist, in the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active-duty member of the Armed Forces of the United States and was honorably discharged. Existing law authorizes a board to adopt regulations necessary to administer those provisions. This would create an additional military group eligible for expedited processing of applications.

Analysis: This bill would require the board to expedite, and authorize a board to assist, in the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant is an active duty member of a regular component of the Armed Forces of the United States enrolled in the United States Department of Defense SkillBridge program, as specified, and would provide that regulations to administer those provisions be adopted in accordance with the rulemaking provisions of the Administrative Procedure Act.

AB 1055 (Bains) Creation of License Alcohol and Drug Counselor License and Allied Behavioral Health Board

Summary: This bill would create, upon appropriation by the Legislature, the Allied Behavioral Health Board within the Department of Consumer Affairs. The bill would require the board to establish regulations and standards for the licensure of alcohol drug counselors, as specified. The bill would authorize the board to collaborate with the Department of Health Care Access and Information regarding behavioral health professions, review sunrise review applications for emerging behavioral health license and certification programs, and refer complaints regarding

behavioral health workers to appropriate agencies, as specified. The bill would require an applicant to satisfy certain requirements, including, among other things, possession of a master's degree in alcohol and drug counseling or a related counseling master's degree, as specified.

The bill would, commencing 18 months after the board commences approving licenses, impose additional requirements on an applicant, including completion of a supervised practicum from an approved educational institution, and documentation that either the applicant is certified by a certifying organization or the applicant has completed 2,000 hours of postgraduate supervised work experience. The bill would impose requirements related to continuing education and discipline of licensees. The bill would prohibit a person from using the title of "Licensed Alcohol Drug Counselor" unless the person has applied for and obtained a license from the board, and would make a violation of that provision punishable by an administrative penalty not to exceed \$10,000.

Analysis: This bill creates a new board within the Department of Consumer Affairs (DCA) to create a new licensed type and regulate them. The new license type is Licensed Alcohol Drug Counselor. While there is no committee analysis about the bill, it appears that there is a need to regulate alcohol and drug counselors and creating a new regulatory board to regulate them. The bill does specify that no program is required to utilize a licensed alcohol drug counselor, it may be that future changes may needs such a license type with specific high level of education. This bill is on the list to be aware of this proposed change.

SB 372 (Menjivar) Former Names and Gender Removal

Summary: This bill requires licensing agencies such as OMBC to remove the prior name of a licensee from the license search when a name change has occurred with required documentation. This bill also requires that the board change the name of the person on their license certificate or pocket card without charging a higher fee. This bill also requires the board to keep track of the prior name so that it can be provide if needed pursuant to an enforcement complaint. The prior name shall for all other purposes be deemed confidential.

Analysis: The Board already changes the name once the required documents are received from the license file and the license search. However, there would need to be changes to breeze to automate the requirements of this bill. Without such automation, tracking this would be done manually which is time consuming.